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Public Finance, Taxation, and Tariff

The Federal Income Tax. By ROBERT M. HAIG, THOMAS S. ADAMS, THOMAS REED POWELL, FRED T. FIELD, ROBERT H. MONTGOMERY, GEORGE E. HOLMES, ARTHUR A. BALLANTINE, WALTER A. STAUB, R. V. NORRIS, and P. S. TALBERT. A Series of Lectures delivered at Columbia University in December, 1920. Edited by ROBERT M. HAIG, with an introduction by E. R. A. SELIGMAN. (New York: Columbia University Press. 1921.)

The titles of the several lectures in this collection are: "The concept of income," by Haig; "When is income realized," by Adams; "The constitutional aspects of federal income taxation," by Powell; "The legal force and effect of treasury interpretation," by Field; "Reorganization and the closed transaction," by Montgomery; "Loss as a factor in the determination of income," by Holmes; "Inventories," by Ballantine; "Consolidated returns," by Staub; "The taxation of income from natural resources," by Norris; "Relief provisions and treasury procedure on appeals," by Talbert. Professor Seligman in a graceful "introduction" states some of the problems.

As in the case of some of our magazines this publication seems to need a few words on the "contributors to this issue." Haig is known as the tireless investigator of the single tax-limited experiments in Canada, and more recently as editor of the Report to the American Economic Association on the Taxation of Excess Profits in Great Britain. Adams, now of Yale, is known to all economists as formerly professor and tax commissioner in Wisconsin and lately as the indispensable advisor to Congress and to the Treasury on the income tax. What is good in the income tax law is due to Adams, what is bad to the in-

superable obstacles he encountered. Powell, professor of constitutional law, Columbia, is known to all the legal profession and to many economists for his profound knowledge of the inter-relation between the taxing powers of the states and the federal government. Field is a Boston lawyer and one-time member of the Advisory Tax Board. Montgomery needs no introduction to readers of the REVIEW, for his *Income Tax Procedure* has been reviewed each year. Holmes is Montgomery's friendly rival as author of a standard annual on *Federal Taxes*. Ballantine is a lawyer and was for a time Solicitor of Internal Revenue. Staub is an accountant in the same firm with Montgomery, and author of *Income Tax Guide*; Norris is a mining engineer. Talbert was at one time chairman of the committee on appeals and review in the Bureau of Internal Revenue. Of the right of these notables to "speak with authority" there can be no doubt.

To pass these ten lectures, each full of controversial matters, in review within our allotted space is exceedingly difficult. Nothing more can be done than to select arbitrarily one point in each lecture.

Haig builds his lecture around a definition of income which he says "the economist offers." According to that definition, "Income is the money value of the net accretion to one's economic power between two points of time." Since he quotes a good many other definitions by economists all of which are different we may take the liberty of reading "Haig" for "the economist." The great difficulty with the definition is that it leaves undecided, as does the lecture itself, the issue whether in the case of income from property, that is investment income, the measure of "economic power" shall be the annual value, or the increase in capital value, or, as our federal law is now interpreted, both of these whenever the increase of capital value is reduced to money. He discusses briefly the British concept of taxable income as the "annual value" of property, the annual profits, earnings, etc., and discharges it apparently because it is so old. "For an explanation of this conception . . . one must go back as far as the fifteenth century. . . ." Thus lightly are the good old things cast aside.

Adams' lecture is for him unusually technical. It is in the main an explanation, carrying in some measure a defense of the Treasury rulings as to the year in which income not strictly current is to be considered taxable. There is as is usual in Adams' statements a lot of common sense, forcefully presented. As a sample we may cite the argument that sound practice in income taxation must adopt as basis of determining the income received, the accounting and other business practices of each of the different lines of business. Following this line of argument one wonders why the bureau cannot furnish different forms for returns by different classes of taxpayers. The regulations

recognize differences, yet since the forms are all the same, the differentiating calculations must be made all outside the forms. A very enlightening review of the cases decided by the courts is part of the lecture.

To select a point or two from Powell's comprehensive survey is merely to make one regret all the more the many others one leaves unmentioned. But no more can be done. We select thus the one point (p. 62) that when the court, ruling on legal or constitutional provisions, reaches a decision which is "hard-hearted" or "inclement," Congress may repent and has repented such "unkindness." Turning the point to what has occurred since the lecture was delivered, if we feel that the decision that increments in capital investments are legally taxable works a hardship in all cases where the income that caused them is already taxed the remedy is not in disputing the decision but in moving Congress not to exercise the power, which the court says it has, of working this injustice. It is interesting to note that Powell proved a true prophet in forecasting the decision of the court as delivered March 28, 1920. There is a great deal in the "study of the psychology of courts" in which Powell is an expert.

It is new to American law to give to an administrative officer any powers approaching legislation. Yet in passing a law like the income tax law Congress cannot foresee every application it may have and the power to make either administrative or interpretative rulings amounting almost to new legislation has to be vested in the administration. Congress hedged this delegated power about with restrictions that, by taking from such rulings anything final or conclusive, leave the taxpayer all too often "up in the air." But that is part of our system of government. The conclusion of Field's lecture is: "Administrative rulings are made under authority of a delegated quasi-legislative power and, if within the scope of the delegation, have the effect of law as quasi-statutes. They are presumed to be valid. Interpretative rulings have no effect as law, since they are not within the delegation of quasi-legislative power and since no power of conclusive quasi-judicial construction is given to the Treasury Department" (p. 113).

Montgomery's article deals with a much vexed question, a part of the question "when is a transaction a closed transaction." The difficulty is the old one of the interpretation of the par value of shares of stock. "Par" being always a fiction, even if "par" at one time corresponded to "true," may at another time be something far different. Yet undoubtedly juggling with par values may cover or reveal profits, and in some cases enable a shrewd one to make a profit from the loss of one

less sharp. This is a highly technical matter discussed with Montgomery's usual force and bluntness.

"Depreciation, obsolescence, amortization and losses due to casualties or theft" is the subtitle of Holmes's lecture. "In our present system, comprising all the acts passed since the Sixteenth Amendment to the Constitution, the notion is that not only should the taxpayer be taxed on the annual fruit which his tree, capital, bears, but also upon the growth of the tree itself—the enlargment of the trunk and branches, and the new branches which have sprouted during the year" (p. 137). With this admirable simile, showing how we came to be dealing at once with income and capital under the guise of an income tax, Holmes opens his lecture. Since we are going to tax the growth of the tree we have to consider the damage to the old growth, hence the deductions above listed.

Ballantine's lecture is a straight away explanation of the rulings on inventories. Inventories have a twofold importance. Not only may they be so taken as to increase or decrease the income tax, but if taken so as to increase the income tax, will decrease the excess profits tax and the contrary. Furthermore, with the great fluctuations in prices inventory taking has presented serious technical difficulties.

Nowhere has the proverbial ingenuity of the Philadelphia lawyer found greater scope than in making intricate combinations of corporations within corporations. For wheels within wheels a Swiss watch is simplicity itself compared with some of our "affiliations or communities of financial interests." It is possible to trace the line of power when there is one main spring in a parent company but that is not always the case. Staub explains, with numerical illustrations, the meaning of the rulings on this complicated and technical subject.

Norris takes up the subject of wasting assets, especially the depletion of mines. There is a distinct analogy between an annuity and the proceeds of mining. This Norris recognizes in his suggestion that "as the fair value of a property at any date is the present value of the future earnings discounted to that date, depletion could logically be taken as a percentage of earnings for each year, such percentage being the present value of an annuity of $1,000 a year for the estimated life of the property, divided by the number of years estimated life." He has also interesting alternative suggestions. He recognizes the differences in different industries. The lecture is full of suggestions and leads the reviewer to the conclusion that all annuities and all like incomes should have a special treatment, if not special and lower rates, by reason of the fact that the only known quantity, the annual payment or dividend, is in part only true net income.

Except for the few large taxpayers or associations of taxpayers who

can keep attorneys or experts in Washington always on the job, the problem of getting a hearing, of obtaining refunds, and of making appeals is like that confronting Stanley when he set out to find Livingston in Darkest Africa. Talbert shows the taxpayer his legal rights and discusses the administrative methods, and difficulties. But he does not, nor can he as long as the law compels the taxpayer to shoot so long a bow, show you or me where to aim. It is with relief, not to say surprise, that we read that every "case receives the most careful scrutiny." But it is cold comfort to learn that it is only fear of establishing precedents that deprives one of the satisfaction of knowing the result of an attempted appeal even when knowing the worst would be better than the uncertainty.

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British War Finance and the Consequences. By T. J. Kiernan. (London: P. S. King and Son. 1921. Pp. vi, 134. 5s. 6d.)

I read this little book through carefully preparatory to writing this review. Then I read it all over again to renew the pleasure I had found in it. It deals with important matters, and presents them clearly and very attractively. It is a dissertation presented for the M. A. degree, at the National University of Ireland. Would that all scholastic dissertations were as good. Brief as it is, it will serve as a handy reference book and one wishes it had an index, which is missing.

The book begins with a statement of the financial system of Great Britain as it was before the war, in which none but the essentials are reviewed. The gold standard, a currency supplied by the Mint, the complete separation of the Bank of England's issue department from the fiscal operations of the government, the non-interference of the government with the currency, and the freedom of credit from political control are the main points set forth. The first chapter ends with a table showing that British government expenditures multiplied thirteenfold, increasing from £m 196.5 in the fiscal year 1913-14 to £m 2,576.5 in 1918-19. This sets the problem, which is to trace the changes in the financial system thus occasioned.

The story of the first shock to credit in 1914 has been well told several times, but never better than by Mr. Kiernan. He is franker than some others have been in condemnation of the resort to and continuance of issue of the £1 and 10s. legal tender currency notes. "By this measure, the monetary and fiscal functions of the State were confused for the first time in the modern history of the country, and all check on the Government's power of issuing more currency than was required by the demands of industry was removed" (p. 25). Was that